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August 14, 2006

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AOR 2006-25

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FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL

Re: Request for Expedited Advisory Opinion

Dear Mr. Norton:

The undersigned submits this request on behalf of Jon Kyl for US Senate, the principal authorized committee ("the Committee") of Jon L. Kyl, Republican candidate for reelection to the United States Senate from Arizona ("Sen. Kyl"), (collectively "Requesters").

Requesters hereby submit this request for an Advisory Opinion from the Federal Election Commission ("the Commission" or "the FEC") pursuant to 2 U.S.C. §437f and 11 C.F.R. §112.1. Specifically, Sen. Kyl seeks expedited review of this request pursuant to 2 U.S.C. §437f(b), or within twenty (20) days of the date of this submission¹.

The provisions of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA") at issue in this request are those related to the so-called Millionaires' Amendment. Tit. 2 U.S.C. §441a(i) and 11 C.F.R. §400.1 *et seq.*, specifically with respect to the definition of "opposing candidate", which term is not defined in the statute but which is defined in the *Interim Final Rule on Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-Financed Candidates*, 68 Fed. Reg. 3970, 76 (Jan. 27, 2003) ("Interim Final Rule"). See 11 C.F.R. §400.3.

Questions:

1. Is Sen. Kyl permitted to begin soliciting and receiving contributions in increased limits under the Millionaires' Amendment by virtue of the fact that neither Sen. Kyl nor his Democratic opponent, Jim Pederson, have primary opponents? Sen. Kyl submits that all personal funds spent by Mr. Pederson prior to the Arizona primary election be counted toward the amount(s) required to

¹ The Arizona primary election will be held on September 12, 2006. This Advisory Opinion Request is submitted within sixty (60) days of the primary election and Sen. Kyl is thus entitled to expedited review. 2 U.S.C. §437f(b)



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trigger the Millionaires' Amendment in 2006 in Arizona for the reason that Mr. Pederson's only opponent is Sen. Kyl.

2. At the very least, if *all* Mr. Pederson's personal funds contributed during the primary are not counted for purposes of triggering the Millionaires' Amendment, are the personal funds of Mr. Pederson which have been spent for communications specifically referencing and targeting Sen. Kyl deemed general election expenditures pursuant to 11 C.F.R. §102.9(e)(1), requiring an accounting of said expenditures as having been made for the general election? And, as expenditures for the general election, can those amounts be included in the calculations of the threshold(s) for purposes of triggering the Millionaires' Amendment so as to enable Sen. Kyl to raise funds under the increased contribution limits, inasmuch as they are clearly aimed at influencing the general (and not any primary) election?

3. Are the national party committees' coordinated spending limits removed by virtue of the fact that Mr. Pederson has spent from his personal funds amounts sufficient to trigger the removal of the national party coordinated expenditures for Arizona during 2006?

Facts Applicable to Advisory Opinion Request

Under Arizona law, the last date for candidates to file as partisan candidates for office, including the office of United States Senate, was June 14, 2006. *See* A.R.S. §§16-311, 16-341. As of that date, the only Democratic candidate for the United States Senate to file for the office of United States Senate was Jim Pederson of Phoenix, Arizona. The only Republican candidate to file formal nominating papers as of June 14, 2006 was Jon L. Kyl.

Since June 14, 2006, an individual has filed documents with the Arizona Secretary of State to be qualified as a write-in candidate for the Republican nomination for the US Senate in the September 12, 2006 Republican primary. Further, no other Democratic candidate, including any write-in candidate, has filed or registered with the Arizona Secretary of State as required by law and the deadline for doing so was August 3, 2006. Only candidates who file complete, timely documents will be considered "official write-in candidates." Only official write-in candidates will have their names posted in the polling places and their votes counted. *See* A.R.S. § 16-312(C).

Jim Pederson has *no* primary opposition whatsoever and all spending by Mr. Pederson, including all spending of his personal funds, are calculated only to defeat Sen. Kyl, the incumbent Republican Senator.

There is only one Democratic candidate and he has spent, to date, **\$4,591,098.00** from his personal funds.

The following chart shows the amount of personal funds spent by Mr. Pederson thus far and the date the expenditures were reported to the FEC:



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Date of Pederson Personal Funds Contribution	Amount of Pederson Personal Funds
03/31/06	\$2,000,000
05/08/06	\$1,200,000
06/14/06	\$ 250,000
06/30/06	\$ 275,000
07/20/06	\$ 459,098
07/31/06	\$ 200,000
08/04/06	\$ 207,000
Total as of 08/14/06	\$4,591,098

Pederson's *only* opponent is Sen. Kyl and his spending is plainly dedicated to a campaign against Sen. Kyl. Mr. Pederson's \$4,591,098 in personal contributions to his campaign is fact, not speculation, as is the Pederson's campaign's decision to spend large portions of that money directly to attack Sen. Kyl. Of the \$3,725,000 spent by Mr. Pederson from his personal funds as of June 30, 2006, the last reporting date for which data is available, we estimate that at *least* \$1,590,063.36 was spent attacking Sen. Kyl:

Pederson Estimated Allocations to Attacking Kyl Through June 30, 2006

TV Attack Ads on Kyl:	\$1,240,370.69
Internet Attacks on Kyl:	\$ 133,896.51
Opposition Research on Kyl:	\$ 140,296.16
Radio Attack Ads on Kyl:	\$ 75,500.00

Total Known² Amounts Spent Attacking Kyl: \$1,590,063.36

² Amounts spent by Pederson for campaign literature and message consulting regarding Sen. Kyl are unknown but are certainly more than *de minimis*.

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See Attached Exhibits A, B, C and D detailing the estimates of Pederson personal funds expenditures and scripts of Pederson ads referencing Sen. Kyl as of June 30, 2006.

Specifically, Jim Pederson has run three television advertisements attacking Senator Kyl. For example, one of Jim Pederson's television ads begins, "Jon Kyl votes 97 percent of the time the way George Bush tells him. Yet even President Bush calls Kyl's immigration plan for massive deportation unrealistic." (Pederson Television Ad, "No Amnesty," Released May 2, 2006). Similarly, a radio ad released on April 22, 2006 by the Pederson Campaign includes this strikingly negative attack on Senator Kyl's immigration plan; "Republican Jon Kyl supports an immigration plan that would tear our community and our families apart. Senator Kyl actually wants undocumented workers to turn themselves in and be sent back to their country of origin. Democrat Jim Pederson has a better plan that lifts our people out of the shadows where they have been living and working for years." (Pederson Radio Ad, "Respect," Released April 22, 2006).

It is apparent to any reasonable observer that these ads and expenditures are aimed at Sen. Kyl and should be deemed general election expenditures.

In fact, the Pederson Campaign has plainly stated that his campaign is focused on Sen. Kyl and not on the primary election. Even when briefly faced with potential primary opposition from former state lawmaker John Verkamp, who failed to qualify for the primary ballot, Pederson's former campaign manager Mario Diaz said, "Jim Pederson is locked in on Jon Kyl all the way to November." (Arizona Republic, "Ex-GOP State Lawmaker to Join U.S. Senate Race as Democrat," May 5, 2006). Pederson even publicly challenged Kyl to a "series of debates" prior to the close of the filing period. (Arizona Republic, "Pederson Seeks to Debate Kyl on Migrants," April 21, 2006). And an analysis conducted on July 17, 2006 found that of 100 press releases issued by the Pederson Campaign, 71 were entirely anti-Kyl. See Attached Exhibit E. There can be no doubt that the Pederson campaign has expended significant resources on attacks aimed solely at the general election contest with Sen. Kyl.

Millionaires' Amendment Threshold in Arizona in 2006

To put into perspective the inherent flaw in the Commission's narrow definition of 'opposing candidate' found in 11 C.F.R. §400.3 as applied to the facts of this AOR and to demonstrate why Sen. Kyl should be allowed to begin immediately raising funds under the increased limits, the following are the amounts and calculations for triggering the Millionaires' Amendment in Arizona in 2006:



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12/31/05 -- Form 3Z-1 General Election Receipts Reported

Kyl	\$ 1,532,410.00	= gen'l receipts minus personal funds
Pederson	\$ 452,675.00	= gen'l receipts minus personal funds
	\$ 1,079,735.00 ÷ 2	= \$539,867

Kyl General Election Fundraising Advantage = \$539,867 (this amount is added to the threshold and basic formula numbers)

FEC Published Numbers for Arizona for 2006:

Threshold	3x	6x	6x /no coordinated
324,360	648,720	1,297,440	3,243,600

To trigger Kyl increased contribution limits:

Level #1: 3x limit (\$2100 x 3) = \$6,300 per person

\$ 648,720	FEC 3x Threshold for Arizona
+ 539,867	Kyl Fundraising Advantage
<u>\$1,188,587</u>	

Level #2: 6x limit (\$2100 x 6) = \$12,600 per person

\$1,297,440	FEC 6x Threshold for Arizona
+ 539,867	Kyl Fundraising Advantage
<u>\$1,837,307</u>	

Level #3: 6x limit (\$2100 x 6) = \$12,600 per person and NRSC coordinated limits removed

\$3,243,600	FEC 6x Threshold for Arizona
+ 539,867	Kyl Fundraising Advantage
<u>\$3,783,467</u>	

Thus, but for the narrow definition of 'opposing candidate' in the FEC regulations, a definition *not* found in the statute, Sen. Kyl clearly should be allowed to start raising additional contributions above the \$2100 per person level:

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Increased Limits	Amounts Allowed under Increased Limits	Bigger Amounts in Arizona as per Eric St. John AZA	Pederson Total Personal Spending as of August 13, 2006
Level #1 (3x limit)	\$ 6,300 per person	\$1,188, 587	\$4,591,098
Level #2 (6x limit)	\$12,600 per person	\$1, 837,307	\$4,591,098

The total amount of Mr. Pederson's personal spending (\$4,591,098) is also well above the amount that would allow the national party committees' coordinated spending limits on behalf of Sen. Kyl to be lifted, because the amount to trigger the removal of those limits is \$3,783,467 in 2006 in Arizona, an amount that Mr. Pederson has surpassed.

Legal Authorities

The statutory language of BCRA did not and does not limit 'opposing candidate' to one in the same election. *See* 2 U.S.C. §441a(i). Indeed, the Federal Election Commission ("the Commission" or "the FEC") adopted in its Interim Final Rule the definition of opposing candidate as one 'in the same election' although no such narrow interpretation appears in the statute.

The Commission has already been asked and is presumably considering at this time whether to allow amounts of personal funds spent prior to a primary election to be counted toward the threshold for triggering the Millionaires' Amendment. *See* Advisory Opinion Request 2006-21, submitted by Sen. Maria Cantwell, candidate for re-election to the United States Senate from the State of Washington ("AOR 2006-21").

This request is distinguishable from AOR 2006-21 because it is not at all speculative. AOR 2006-21 poses the hypothetical where one candidate "anticipates" that the other candidate could spend money on attacks "should he choose to spend personal funds in connection with this Senate race." [AOR 2006-21].

In this case, the facts presented are based on actual expenditures by the Pederson campaign. Even if the Commission determines that it intends to continue to force candidates to abide by the very narrow definition of 'opposing candidate' promulgated in its regulations in response to the 'potential' circumstances outlined in AOR 2006-21, the facts underlying this Advisory Opinion Request are distinguishable in that Mr. Pederson has already made substantial general election expenditures.

Sen. Kyl is entitled to authorization to immediately raise funds under the increased limits because the *Interim Final Rule* did not contemplate within the definition of 'opposing candidate' the situation which presently exists in Arizona, to-wit: where a candidate has no opposition the day filing closes *other* than the candidate filed in the other party's primary election.

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The FEC has previously gone beyond the strict construction of the provisions of the Millionaires' Amendment to give effect to the purpose of the legislation, which the FEC described as an effort "to bring about equity and fairness" in elections. *See* 147 CR S2537 (daily ed. March 20, 2001) (Sen. DeWine), *cited in* AOR 2006-06. In that case, the FEC had to decide whether expenditures by a candidate running in two simultaneous election cycles would count towards her Millionaires' Amendment threshold in both elections. The FEC found that "the purposes of the Millionaires' Amendment are best effectuated by designating all personal expenditures by a candidate to both elections in which the candidate is participating." AOR 2006-06 at 7. The FEC warned that to find otherwise would allow the candidate to "split his or her expenditures between the elections, and effectively double the personal funds threshold." *Id.*

Similarly, to allow Jim Pederson to spend more than \$4.6 million in an unopposed primary election, with more than \$1.5 million spent directly on attacks against Sen. Kyl, without triggering the Millionaires' Amendment would effectively allow him to double the personal funds threshold. It would also create a loophole in states like Arizona with late primaries which would eviscerate the purpose and intent of the Millionaires' Amendment.

Conclusion.

The facts speak for themselves. The Commission's *Interim Final Rule* interpreting the Millionaires' Amendment has remained an 'interim' rule rather than having been promulgated as a *final* regulation. *See Interim Final Rule, supra* at 3970 ("The Commission is promulgating these rules on an interim final basis. The Commission is soliciting comments on all aspects of the interim final rules and may amend the interim rules as appropriate in response to comments received.")

Clearly, this is an instance in which the Commission regulations have not implemented the statute in the manner in which Congress intended. A wealthy, self-financed candidate with no opponent other than his general election opponent should not be able to 'game' the system by spending millions of dollars before a primary election in which he is unopposed, including spending personal funds that specifically reference his general election opponent – and for *none* of those personal funds expenditures to be counted toward the threshold and triggering amounts.

Accordingly, Sen. Kyl seeks approval from the Commission to begin raising contributions in increased amounts as specifically provided under 2 U.S.C. §441a(i) and that the Commission further authorize the removal of the coordinated spending limits by the national party committees of the Republican party.



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Please contact the undersigned at (202) 295-4081 if you have any questions.

Respectfully submitted,

A handwritten signature in black ink that reads 'Clea Mitchell'.

Clea Mitchell, Esq.
Counsel to Jon Kyl for US Senate

Exhibits:

- A: Breakdown of Pederson Expenditures
- B: Pederson Spending on Kyl Attacks through June 30, 2006
- C: Expenditures on TV Attack Ads
- D: Scripts of Pederson Ads Attacking Kyl
- E: Newspaper Articles Referencing Kyl as Pederson's Sole Opponent

EXHIBIT A

BREAKDOWN OF PEDERSON EXPENDITURES

PEDERSON ESTIMATED ALLOCATIONS TO ATTACKING KYL

FIGURES BASED ON DATA THROUGH JUNE 30, 2006

TV Attack Ads on Kyl:	\$1,240,370.69
Internet Attacks on Kyl:	\$133,896.51
Radio Attack Ads on Kyl:	\$75,500.00
Opposition Research on Kyl:	\$140,296.16
Campaign Literature:	Unknown
Message Consulting:	Unknown
Total Spent on Attacking Kyl:	\$1,590,063.36

TV MEDIA EXPENSES

Total Spent on TV Ads (market and production): \$2,314,224.78

Evidence (FEC):

- \$2,159,444.00 to Media Strategies and Research (media market buys)
- \$636,694.29 to AKP Message & Media (consulting, ad production)
- \$108,516.49 to Struble Eichenbaum Communications (consulting, ad production)

Estimated Total Spent on TV Attack Ads: \$1,240,370.69

Evidence (Excel File, "Pederson Spending on Kyl Attacks (to June 30, 2006)", Tab: "TV Attacks")

- \$1,175,260.80 to TV Attack Media Buys
- \$65,109.89 to TV Attack Ad Production

INTERNET EXPENSES

Total Spent on Internet: \$200,844.77

Evidence (FEC):

- \$45.50 to GoDaddy.com (domain and hosting registration)
- \$30,070.00 to Liberty Concepts, LLC (website design)
- \$170,729.27 to Riester-Robb (Internet PR consulting, online banner ad design)

Estimated Total Spent on Attacking Kyl: \$133,896.51

Evidence (East Valley Tribune, "Pederson leads 100-52," 7/23/06)

- July 13th marked the 100th press release by Pederson, which at that point, showed 71 releases devoted entirely to attacking Kyl (not counting releases that partially attack Kyl).
- Since this analysis only counts money spent up until June 30, 2006, only those releases issued to that date can be used as evidence. Exactly two-thirds (66.67%) of his releases attacked Kyl to that date.
- Since 66.67% of the time, Pederson attacks Kyl on his website, it is reasonable to conclude that 66.67% of Internet expenses have been used solely to attack Kyl.

RADIO AD EXPENSES

Total Spent on Radio Ads (market and production): \$475,500.00

Evidence (FEC):

- \$28,500.00 to Mario Diaz & Associates. (consulting)
- \$40,000.00 to Media Strategies and Research (media market buys)
- \$7,000.00 to Urias Communications (ad production)

Total Spent on Radio Attack Ads: \$475,500.00

Evidence (Arizona Republic Plugged-In, Dan Nowicki, "Pederson aims anti-Kyl radio ad at Latinos," 5/3/06)

- Pederson has released one radio ad, a 60-second attack ad (both in Spanish and in English) accusing Kyl of "disrespecting" Latinos and "denying (their) contribution to the economy."
- http://www.azcentral.com/blogs/index.php?blog=85&title=pederson_aims_anti_kyl_radio_ad_at_valle&more=1&c=1&tb=1&pb=1

RESEARCH EXPENSES

Total Spent on Research: \$197,600.22

Evidence (FEC):

- \$171,479.80 to Harstad Strategic Research, Inc. (consulting, travel, and polling)
- \$26,120.42 to Varoga & Rice, Inc. (consulting)

Total Spent on Opposition Research: \$140,296.16

Evidence (East Valley Tribune, "Pederson leads 100-52," 7/23/06)

- July 13th marked the 100th press release by Pederson, which at that point, showed 71 releases devoted entirely to attacking Kyl (not counting releases that partially attack Kyl).
- Since this analysis only counts money spent up until June 30, 2006, only those releases issued to that date can be used as evidence. Exactly two-thirds (66.67%) of his releases attacked Kyl to that date.
- Since 66.67% of the time, Pederson attacks Kyl on his website, it is reasonable to conclude that 66.67% of research expenses have been used for the purposes of opposition research.

CAMPAIGN LITERATURE

Total Spent on Campaign Literature: \$67,800.94

Evidence (FEC):

- \$1,500 to Cindy Cole (consulting)
- \$66,300.94 to Direct Line Politics, Inc. (consulting and direct mail production)

MESSAGE CONSULTING

Total Spent on Message Consulting: \$35,499.59

Evidence (FEC):

- \$11,172.00 to Jeremy Helfgot (consulting)
- \$24,327.59 to Andrei Cherny (consulting)

EXHIBIT B

PEDERSON SPENDING ON KYL ATTACKS THROUGH JUNE 30, 2006

Pederson Estimated Spending on Kyl Attacks (to June 30, 2006)

Expenditure Category	Total Expenditures	Estimated Total Spent on Attacking Kyl
TV	\$2,314,224.78	\$1,240,370.69
Internet	\$200,844.77	\$133,896.51
Radio	\$75,500.00	\$75,500.00
Research	\$197,600.22	\$140,296.16
Campaign Literature	\$67,800.94	?
Message Consulting	\$35,499.59	?
Totals	\$2,891,470.30	\$1,690,063.36

		TV Media						
Vendor	City	State	Purpose	Mo	Day	Year	Amount	Page
AKP MESSAGE & MEDIA	CHICAGO	IL	MEDIA CONSULTANT	10	5	2005	\$20,000.00	204
AKP MESSAGE & MEDIA	CHICAGO	IL	MEDIA CONSULTANT EXPENSE	10	5	2005	\$7,131.84	204
AKP MESSAGE & MEDIA	CHICAGO	IL	MEDIA CONSULTANT EXPENSE	10	5	2005	\$491.40	204
AKP MESSAGE & MEDIA	CHICAGO	IL	MEDIA CONSULTANT	11	15	2005	\$5,000.00	254
AKP MESSAGE & MEDIA	CHICAGO	IL	MEDIA CONSULTANT EXPENSES	11	15	2005	\$835.70	255
AKP MESSAGE & MEDIA	CHICAGO	IL	MEDIA CONSULTANT EXPENSES	11	15	2005	\$1,715.84	255
AKP MESSAGE & MEDIA	CHICAGO	IL	VIDEO EDITING FEES	11	30	2005	\$279.00	287
AKP MESSAGE & MEDIA	CHICAGO	IL	MEDIA CONSULTANT	11	30	2005	\$5,000.00	287
AKP MESSAGE & MEDIA	CHICAGO	IL	MEDIA CONSULTANT	1	15	2006	\$5,000.00	194
AKP MESSAGE & MEDIA	CHICAGO	IL	VIDEO EDITING FEES	1	15	2006	\$810.51	194
MEDIA STRATEGIES AND RESEARCH	DENVER	CO	TV MEDIA BUYS	4	6	2006	\$590,430.00	255
MEDIA STRATEGIES AND RESEARCH	DENVER	CO	TV MEDIA BUYS	4	10	2006	\$41,200.00	255
MEDIA STRATEGIES AND RESEARCH	DENVER	CO	TV MEDIA BUYS	4	19	2006	\$595,268.00	307
MEDIA STRATEGIES AND RESEARCH	DENVER	CO	TV MEDIA BUYS	4	21	2006	\$152,700.00	308
MEDIA STRATEGIES AND RESEARCH	DENVER	CO	TV MEDIA BUYS	5	9	2006	\$347,923.00	359
MEDIA STRATEGIES AND RESEARCH	DENVER	CO	TV MEDIA BUYS	5	10	2006	\$359,923.00	360
MEDIA STRATEGIES AND RESEARCH	DENVER	CO	TV MEDIA BUYS	5	22	2006	\$72,000.00	410
STRUBLE EICHENBAUM COMMUNICATIONS	WASHINGTON	DC	MEDIA CONSULTANT	2	2	2006	\$10,000.00	242
STRUBLE EICHENBAUM COMMUNICATIONS	WASHINGTON	DC	MEDIA CONSULTANT	3	15	2006	\$10,000.00	335
STRUBLE EICHENBAUM COMMUNICATIONS	WASHINGTON	DC	MEDIA CONSULTANT EXPENSES	3	15	2006	\$100.00	335
STRUBLE EICHENBAUM COMMUNICATIONS	WASHINGTON	DC	TV AD PRODUCTION	4	1	2006	\$25,000.00	218
STRUBLE EICHENBAUM COMMUNICATIONS	WASHINGTON	DC	MEDIA CONSULTANT TRAVEL EXPENSES	4	1	2006	\$3,055.71	218
STRUBLE EICHENBAUM COMMUNICATIONS	WASHINGTON	DC	MEDIA CONSULTING	5	15	2006	\$10,000.00	383
STRUBLE EICHENBAUM COMMUNICATIONS	WASHINGTON	DC	MEDIA CONSULTING	5	15	2006	\$320.91	384
STRUBLE EICHENBAUM COMMUNICATIONS	WASHINGTON	DC	MEDIA CONSULTING	5	30	2006	\$18,491.88	424
STRUBLE EICHENBAUM COMMUNICATIONS	WASHINGTON	DC	MEDIA CONSULTING	5	30	2006	\$1,254.33	424
STRUBLE EICHENBAUM COMMUNICATIONS	WASHINGTON	DC	MEDIA CONSULTING	6	15	2006	\$30,293.66	473
Totals							\$2,314,224.78	
See Worksheet Tab entitled "TV Attacks"							\$1,240,370.69	

Pederson Estimated Spending on Kyl Attacks (to June 30, 2006)

Vendor			City	State	Purpose			Mo	Day	Year	Amount	Page	Sums to Vendor	
GODADDY.COM			SCOTTSDALE	AZ	DOMAIN NAME REGISTRATION (MEMO0			9	15	2005		145		
GODADDY.COM			SCOTTSDALE	AZ	WEBSITE			6	15	2006	\$17.90	461		
LIBERTY CONCEPTS, LLC			CAMBRIDGE	MA	WEB DEVELOPMENT AND DESIGN			10	4	2005	\$6,820.00	193	\$45.50	
LIBERTY CONCEPTS, LLC			CAMBRIDGE	MA	WEB DEVELOPMENT AND DESIGN			10	30	2005	\$600.00	225		
LIBERTY CONCEPTS, LLC			CAMBRIDGE	MA	WEB DEVELOPMENT AND DESIGN			11	30	2005	\$10,250.00	288		
LIBERTY CONCEPTS, LLC			CAMBRIDGE	MA	WEB DEVELOPMENT AND DESIGN			2	24	2006	\$1,500.00	307		
LIBERTY CONCEPTS, LLC			CAMBRIDGE	MA	WEB DEVELOPMENT AND DESIGN			2	24	2006	\$1,900.00	307		
LIBERTY CONCEPTS, LLC			CAMBRIDGE	MA	WEB DEVELOPMENT AND DESIGN			3	15	2006	\$6,000.00	359		
LIBERTY CONCEPTS, LLC			CAMBRIDGE	MA	WEB DEVELOPMENT AND DESIGN			4	30	2006	\$1,500.00	321		
LIBERTY CONCEPTS, LLC			CAMBRIDGE	MA	WEB DEVELOPMENT AND DESIGN			5	15	2006	\$1,500.00	368	\$30,070.00	
RIESTER-ROBB			PHOENIX	AZ	INTERNET PUBLIC RELATIONS CONSULTING			4	18	2006	\$37,877.19	306		
RIESTER-ROBB			PHOENIX	AZ	INTERNET PUBLIC RELATIONS CONSULTING			5	4	2006	\$40,000.00	358		
RIESTER-ROBB			PHOENIX	AZ	INTERNET PUBLIC RELATIONS CONSULTING			5	25	2006	\$46,617.00	411		
RIESTER-ROBB			PHOENIX	AZ	BANNER AD DESIGN AND INTERNET CONSULTING			6	15	2006	\$46,235.08	471	\$170,729.27	
													Totals	\$200,844.77
													71% of Online Press Releases attack Kyj, so 71% of \$ used for Internet used to attack Kyj	\$133,896.51

Pederson Estimated Spending on Kyl Attacks (to June 30, 2006)

Campaign Literature									
Vendor	City	State	Purpose	Mo	Day	Year	Amount	Page	Sum to Vendor
COLE, CINDY	WASHINGTON	DC	CAMPAIGN LITERATURE	5	15	2006	\$1,500.00	380	\$1,500.00
DIRECT LINE POLITICS, INC.	ALEXANDRIA	VA	DIRECT MAIL CONSULTANT	10	5	2005	\$6,782.59	197	
DIRECT LINE POLITICS, INC.	ALEXANDRIA	VA	DIRECT MAIL CONSULTANT	11	15	2005	\$2,015.75	254	
DIRECT LINE POLITICS, INC.	ALEXANDRIA	VA	DIRECT MAIL PRODUCTION & PROCESSING	2	9	2006	\$30,889.60	249	
DIRECT LINE POLITICS, INC.	ALEXANDRIA	VA	DIRECT MAIL CONSULTANT	2	9	2006	\$2,000.00	249	
DIRECT LINE POLITICS, INC.	ALEXANDRIA	VA	DIRECT MAIL CONSULTANT	2	9	2006	\$11,623.16	249	
DIRECT LINE POLITICS, INC.	ALEXANDRIA	VA	DIRECT MAIL CONSULTANT	2	9	2006	\$2,077.39	250	
DIRECT LINE POLITICS, INC.	ALEXANDRIA	VA	DIRECT MAIL PRODUCTION & PROCESSING	5	15	2006	\$10,912.45	366	\$66,300.94
Totals							\$67,800.94		
Breakdown of Positive to Attack pieces unknown									

Message Consulting									
Vendor	City	State	Purpose	Mo	Day	Year	Amount	Page	Sum to Vendor
HELFGOT, JEREMY	PHOENIX	AZ	COMMUNICATIONS CONSULTANT	4	1	2006	\$1,133.34	226	
HELFGOT, JEREMY	PHOENIX	AZ	COMMUNICATIONS CONSULTANT	4	1	2006	\$2,000.00	227	
HELFGOT, JEREMY	PHOENIX	AZ	SEE MEMO ITEMS	4	15	2006	\$2,510.79	278	
HELFGOT, JEREMY	PHOENIX	AZ	COMMUNICATIONS CONSULTANT [MEMO ITEM]	4	15	2006	\$2,500.00	279	
HELFGOT, JEREMY	PHOENIX	AZ	SEE MEMO ITEMS	4	30	2006	\$144.64	344	
HELFGOT, JEREMY	PHOENIX	AZ	MILEAGE REIMBURSEMENT [MEMO ITEM]	4	30	2006	\$98.93	345	
HELFGOT, JEREMY	PHOENIX	AZ	COMMUNICATIONS CONSULTANT	5	30	2006	\$2,500.00	432	
HELFGOT, JEREMY	PHOENIX	AZ	SEE MEMO ITEMS	6	15	2006	\$100.00	485	
HELFGOT, JEREMY	PHOENIX	AZ	SEE MEMO ITEMS	6	26	2006	\$47.15	505	
HELFGOT, JEREMY	PHOENIX	AZ	MILEAGE REIMBURSEMENT [MEMO ITEM]	6	26	2006	\$20.75	506	
HELFGOT, JEREMY	PHOENIX	AZ	MILEAGE REIMBURSEMENT [MEMO ITEM]	6	26	2006	\$16.40	506	
HELFGOT, JEREMY	PHOENIX	AZ	SEE MEMO ITEMS	6	27	2006	\$100.00	507	
CHERNY, ANDREI	PHOENIX	AZ	MESSAGE CONSULTANT	1	15	2006	\$8,000.00	207	\$11,172.00
CHERNY, ANDREI	PHOENIX	AZ	MESSAGE CONSULTANT	1	15	2006	\$8,000.00	208	
CHERNY, ANDREI	PHOENIX	AZ	MESSAGE CONSULTANT	1	15	2006	\$327.59	208	
CHERNY, ANDREI	PHOENIX	AZ	MESSAGE CONSULTANT	1	15	2006	\$8,000.00	208	\$24,327.59
Totals							\$36,499.59		
Breakdown of Positive to Attack consulting ratio unknown									

EXHIBIT C

MEDIA BUYS FOR PEDERSON ATTACKS ON SEN. KYL

Pederson TV Market Spending from April 10, 2006 to June 5, 2006

		Market Spending (Source: Media Placement Technologies)											
		10-Apr	17-Apr	24-Apr	1-May	8-May	15-May	22-May	29-May	6-Jun	13-Jun		
Phoenix		\$221,535.00	\$211,290.00	\$199,000.00	\$201,000.00	\$227,000.00	\$223,000.00	\$51,200.00	\$0.00	\$0.00	\$0.00	Total	\$1,334,025.00
Tucson		\$91,085.00	\$96,585.00	\$95,270.00	\$84,285.00	\$106,475.00	\$138,705.00	\$26,800.00	\$0.00	\$0.00	\$0.00	Total	\$639,205.00
Yuma		\$18,290.00	\$14,535.00	\$14,650.00	\$14,540.00	\$14,260.00	\$13,730.00	\$0.00	\$0.00	\$0.00	\$0.00	Total	\$90,005.00
Totals		\$330,910.00	\$322,410.00	\$308,920.00	\$299,825.00	\$347,735.00	\$375,435.00	\$78,000.00	\$0.00	\$0.00	\$0.00	Total	\$2,063,235.00
GRPs (Source: TNS Media Intelligence/CMAG)													
Phoenix		661	650	612	618	698	686	223	0	0	0	Total GRPs	4148
Tucson		492	508	515	456	507	661	206	0	0	0	Total GRPs	3345
Yuma		366	291	293	285	275	275	0	0	0	0	Total GRPs	1801
Totals		1519	1449	1420	1365	1490	1622	429	0	0	0	Total GRPs	9294
Cost per GRP Calculation (Market Spending/GRPs)													
Phoenix		\$335.15	\$325.06	\$325.16	\$325.24	\$325.21	\$325.07	\$229.60	N/A	N/A	N/A	Avg Cost/GRP	\$271.5
Tucson		\$185.13	\$190.13	\$184.99	\$184.84	\$210.01	\$209.84	\$130.10	N/A	N/A	N/A	Avg Cost/GRP	\$152.3
Yuma		\$49.97	\$49.95	\$50.00	\$49.97	\$50.04	\$49.93	N/A	N/A	N/A	N/A	Avg Cost/GRP	\$92.94
Total Spots													
Worksheet for Calculating Total \$ for TV Attack Media Buys													
Source: TNS Media Intelligence/CMAG													
Total GRPs													
GRPs Per Spot													
Total Attack GRPs													
Phoenix GRPs + Tucson GRPs + Yuma GRPs = 4148 + 3345 + 1801 =													
Total GRPs/Total Spots = 9294/2715 =													
GRPs Per Spot * # of Attacks Spots = 3.42 * 1523 =													
5213.54													
Total \$ for TV Attack Media Buys													
\$ spent on Phoenix Attacks + \$ spent on Tucson Attacks + \$ spent on Yuma Attacks =													
\$1,175,260.80													

Pederson Attack Ad Expenditures		
Total \$ for TV Attack Media Buys		\$1,175,260.80
Total \$ for TV Attack Ad Production		\$65,109.89
Total \$ Spent on TV Attack Ads		\$1,240,370.69

(Total Expenditures on Struble Eichenbaum/5 ads total)*3 attacks ads = (\$108,516.49/5)*3 =

Ad Title	Ad Type	Spot Count	GRPs	Total Spent in Phoenix	Total Spent in Tucson	Total Spent in Yuma	Total Spent in All Markets
"Self-Made"	Positive	787	2694	\$392,960.89	\$188,257.45	\$26,089.76	\$607,308.11
"Results"	Positive	405	1386	\$202,222.57	\$96,879.63	\$13,426.12	\$312,528.31
"Realistic"	Attack	483	1653	\$241,169.14	\$115,537.93	\$16,011.89	\$372,718.95
"No Amnesty"	Attack	281	962	\$140,307.51	\$67,217.72	\$9,315.40	\$216,840.63
"Nogales"	Attack	759	2598	\$378,980.07	\$181,559.60	\$25,161.54	\$585,701.21
		2715	9294	\$1,355,640.18	\$649,452.32	\$90,004.71	\$2,095,097.22

EXHIBIT D

SCRIPTS OF PEDERSON ADS ATTACKING SEN. KYL

2006 POLITICAL ADS: ARIZONA SENATE
Jim Pederson For Senate: "Results"
Published Tuesday, April 11, 2006

Producer: Struble Eichenbaum Communications

Running Time: 0:30

Debut Date: April 11, 2006

Script of "Results" (TV)

JIM PEDERSON: I'm a businessman. I take dreams and turn them into projects and thousands of jobs.

I bring architects, contractors, government and neighborhood groups together for a common purpose.

I'm Jim Pederson. I sponsored this ad because I don't care if it's a Republican idea or a Democrat idea. I'll be an independent senator who gets results and puts the people of Arizona ahead of party politics.

ANNOUNCER [v/o]: Jim Pederson. Nobody's senator but ours.

(Text on screen: Approved By Jim Pederson; Paid For By Pederson 2006)

2006 POLITICAL ADS: ARIZONA SENATE
Jim Pederson For Senate: "Self-Made"
Published Tuesday, April 11, 2006

Producer: Struble Eichenbaum Communications
Running Time: 0:60
Debut Date: April 11, 2006

Script of "Self-Made" (TV)

JIM PEDERSON: I was born in this little two-bedroom house. With my five brothers, two grandmothers and my parents.

(Text on screen: Jim Pederson; Casa Grande, AZ)

With only one bathroom, you learned the art of negotiation early.
We didn't have much, but my childhood was rich in love, rich in values learned in a small town.

ANNOUNCER [v/o]: Today, Jim Pederson is a self-made, successful businessman who has created thousands of jobs and improved our community.

(Text on screen: Civic Leader)

JIM PEDERSON: I bring people together to get results. That's something Washington could learn.

MICHAEL JOHNSON: Jim helped revitalize our neighborhood into a place where people work and shop.

(Text on screen: Michael Johnson, Phoenix Councilman)

CHUCK WALTON: Jim's new project will mean economic growth to our small town.

(Text on screen: Chuck Walton; Mayor, Casa Grande)

LISA URIAS: Jim Pederson takes dreams and turns them into reality.

(Text on screen: Lisa Urias; Businesswoman)

JIM PEDERSON: I'm Jim Pederson. I sponsored this ad because I don't care if it's a Republican idea or a Democrat idea. I'll be an independent senator who gets results and puts the people of Arizona ahead of party politics.

ANNOUNCER [v/o]: Jim Pederson. Nobody's senator but ours.

(Text on screen: Approved By Jim Pederson; Paid For By Pederson 2006)

2006 POLITICAL ADS: ARIZONA SENATE
Jim Pederson For Senate: "No Amnesty"
Published Tuesday, May 2, 2006

Producer: Struble Eichenbaum Communications

Running Time: 0:30

Debut Date: May 1, 2006

Script of "No Amnesty" (TV)

ANNOUNCER [v/o]: Jon Kyl votes 97 percent of the time the way George Bush tells him.

(Text on screen: Congressional Quarterly, 2001-2005)

Yet even President Bush calls Kyl's immigration plan for massive deportation unrealistic.

(Text on screen: USA Today, 4/25/06)

JIM PEDERSON: I'm Jim Pederson. I sponsored this ad to set the record straight.

My plan starts with tougher enforcement at the border along with a commonsense solution to the undocumented workers already living here in America.

My plan is not amnesty. It's realistic and a long term solution.

(Text on screen: Jim Pederson; Nobody's Senator But Ours; Approved By Jim Pederson; Paid For By Pederson 2006)

2006 POLITICAL ADS: ARIZONA SENATE
Jim Pederson For Senate: "Nogales Two"

Running Time: 0:30

Script of "Nogales Two" (TV)

JIM PEDERSON: This American-made medicine costs 50% more in Nogales, Arizona than it does here in Nogales, Mexico.

(Text on screen: Nogales, Arizona)

(Text on screen: Nogales, Mexico)

ANNOUNCER [v/o]: No wonder we pay the highest prices in the world when Jon Kyl cast the deciding vote to prohibit Medicare from negotiating lower prescription prices.

(Text on screen: Article clip "U.S. Drug Prices Soar")

(Text on screen: Jon Kyl voted Against lower drug prices. Source Congressional Record, Vote #60, 3/17/05)

JIM PEDERSON: I'm Jim Pederson. I sponsored this ad because Washington could use a little business sense and a law that allows us to negotiate lower prescription prices.

(Text on screen: www.pederson2006.com)

ANNOUNCER [v/o]: Jim Pederson. Nobody's Senator but Ours

(Text on screen: Approved By Jim Pederson; Paid For By Pederson 2006)

2006 POLITICAL ADS: ARIZONA SENATE
Jim Pederson For Senate: "Free Ride"
Published Monday, July 24, 2006 Producer: Struble Eichenbaum Communications

Running Time: 0:30
Debut Date: July 21, 2006

Script of "Free Ride" (TV)

MALE ANNOUNCER [v/o]: We pay record prices.

FEMALE ANNOUNCER [v/o]: They make record profits.

MALE ANNOUNCER [v/o]: Congress gives oil companies billions in tax breaks.

FEMALE ANNOUNCER [v/o]: Oil executives pay themselves millions in bonuses.

MALE ANNOUNCER [v/o]: Then Congress cuts money for renewable energy.

FEMALE ANNOUNCER [v/o]: Jim Pederson wants to end Big Oil's special tax breaks and stop their price gouging.

(Text on screen: Pederson Energy Plan)

MALE ANNOUNCER [v/o]: Invest more in renewable and alternative energy and provide new incentives to conserve.

JIM PEDERSON: I'm Jim Pederson. I sponsored this ad because you can't change Washington until you change the people you send there.

(Text on screen: www.pederson2006.com; Nobody's Senator But Ours; Paid For By Pederson 2006)

EXHIBIT E

**NEWSPAPER ARTICLES WITH QUOTES FROM PEDERSON
REFERENCING SEN. KYL AS HIS OPPONENT**

Ex-GOP state lawmaker to join U.S. Senate race as Dem

By Robbie Sherwood

Arizona Republic

May 5th, 2006 6:57 pm

The high-profile race between Republican U.S. Sen. John Kyl and Democrat Jim Pederson is about to get more crowded.

Former state Sen. John Verkamp, who served 10 years in the Legislature as a Republican from Flagstaff, has switched over to the Democratic Party and plans to run on an anti-war platform.

Verkamp, a 65-year-old attorney and Arizona native, will make a formal announcement Tuesday at the Capitol where he plans to lay out his platform. But Verkamp said he grew concerned because neither Pederson nor Kyl was talking about the war in Iraq.

"That's the Number 1 issue for me, that and the pending nuclear war on Iran," Verkamp said.

Verkamp faces long odds of making the ballot and even longer odds of beating the well-financed Pederson in a Democratic primary. Both Kyl, the Republican incumbent, and Pederson, a developer from Casa Grande who served as chairman for the Arizona Democratic Party, are already going at each other over the airwaves with television ads, mostly focused on illegal immigration. Verkamp would face a steep fund-raising disadvantage with his late entry and would also be challenged to gather the required 4,455 nominating signatures by June 14 to make the ballot.

"It's going to be difficult, but we've already started gathering signatures, so I think we can do it," Verkamp said.

Pederson campaign manager Mario Diaz had little to say about Verkamp but denied Pederson has ignored the Iraq war.

"Jim Pederson is locked in on Jon Kyl all the way to November," Diaz said. "If Mr. Verkamp qualifies for the ballot, we will take the necessary steps to defeat him. And rest assured, the Pederson campaign will be discussing all federal issues important to Arizonans."

A spokesman for Kyl's campaign said the senator had no comment on Verkamp's candidacy.

Verkamp said he switched parties in December after a lifetime as a Republican because of President Bush's handling of the war and scandals involving Republicans.

"It's not the Republican Party I was a member of years ago," Verkamp said. "Under President Bush, under Cheney, under Jack Abramoff, I couldn't handle it any more. I got really discouraged and switched over."

Verkamp, an Army veteran, also served 12 years as Coconino County attorney. He now lives in Phoenix. Verkamp was elected to the House in 1992 and served eight years. He won a Senate seat in 2000, but did not run for re-election in 2002. During his House years, Verkamp was a member of a powerful group of moderate Republicans dubbed the "Sue Nation" because three of its members were named Sue.

Verkamp got into legal hot water in late 1999 when he was arrested for extreme DUI after driving the wrong way down a one-way street in Flagstaff. He was sentenced to 10 days in jail, which he served on weekends because the Legislature was in session. Verkamp was arrested again in 2002 on suspicion of

interfering with Scottsdale police officers and resisting arrest. The officers had pulled over a car Verkamp was riding in and were attempting to arrest the driver on suspicion of DUI.

Verkamp said his past brushes with the law could come up during his campaign. He said he'd rather talk about the issues but is set to address questions.

Two other candidates are also trying to make the ballot: Democrat Leonard Clark, a schoolteacher and Iraqi war veteran; and Republican Mike Aloisi, a former advertising executive.

Pederson seeks to debate Kyl on migrants

Pat Flannery

The Arizona Republic

Apr. 21, 2006 12:00 AM

Democrat Jim Pederson challenged his Republican opponent, U.S. Sen. Jon Kyl, to a series of immigration debates "within the next few weeks" after touting a plan Thursday that adds a few new wrinkles to a mix of immigration proposals recently argued in the Senate.

Pederson's plan embraces a mix of elements from a bipartisan bill crafted by Sens. John McCain, R-Ariz., and Edward Kennedy, D-Mass., and a Senate compromise that modified that bill.

The Kyl camp's response to the debate challenge was noncommittal. Kyl spokesman Andy Chasin said the senator was "eager, and pending the Senate schedule, he looks forward to debating" Pederson, but no timetable was set. Chasin also jabbed Kyl's challenger for waiting until after reform efforts stalled on Capitol Hill to tout his own plan. advertisement

The immigration issue is creating the first real sparks in a campaign that failed to catch fire as expected last year when Pederson, a wealthy developer and former Democratic Party chairman, announced his candidacy. Hoping to capitalize on public interest in immigration and Kyl's role in the national policy debate, Pederson recently spent time along the border before weighing in with a plan he had promised for several weeks.

Although the Senate could take up the issue again when it returns next week from its Easter recess, the prospects for comprehensive legislation are uncertain.

The blame game between congressional partisans over who killed the Senate compromise two weeks ago continues nationally and in Arizona. Pederson on Thursday accused Kyl of trying to gut the compromise with amendments. Kyl's campaign countered by blaming Senate Minority Leader Harry Reid, D-Nev., who stumped for Pederson in January, for blocking amendments that could have brought about a final vote.

Kyl campaign manager Jake Logan sent Pederson a letter Thursday urging him to pressure Reid to let amendments be heard if and when the matter comes up again in the Senate.

In his plan, Pederson calls for beefing up the Border Patrol by 12,000 agents and creating a guest-worker program giving undocumented workers a path to citizenship if they paid back taxes and a fine, passed criminal and security checks, had jobs and learned English.

Items specific to Pederson's plan include using high-tech tracking equipment to create a "virtual fence" at the border; creating a Border Patrol service academy similar to the military academies and making G.I. Bill benefits available to agents as inducements to attract and retain them; and retooling anti-racketeering and border-security laws to make smuggling prosecutions easier and penalties harsher.

Kyl also has called for more technological barriers along the border, but his position differs markedly in several key respects. He would require all 11 million to 12 million undocumented workers in the United States to return home temporarily to qualify for guest-worker status.

He said at a Monday media briefing that he opposes an automatic pathway to citizenship for those now in this country illegally. He believes giving all guest workers eventual citizenship would displace U.S. workers in economic downturns.

Pederson leads, 100-52

CAMPAIGN NOTEBOOK

Senate candidates crank out cyberspace news releases by the dozens in feisty Arizona race
By PAUL GIBLIN TRIBUNE -- CONTACT WRITER: (480) 970-2331 or pgiblin@aztrib.com

Much of the campaigning for Arizona's contested U.S. Senate seat has been waged in cyberspace.

The political teams for Republican incumbent Sen. Jon Kyl and Democratic challenger Jim Pederson blast email news releases at least every weekday and often several times a day.

Many of their news releases are intended for broader audiences than members of the press. They're also written for Republican and Democratic party insiders who also are on the distribution lists.

Kyl's people issued one of the most interesting news releases on Monday. It noted that Pederson had reached his 100th news release milestone the previous week.

Here's the breakdown of Pederson's first 100 news releases as tabulated by Kyl's people:

- 71 attacks on Kyl.
- 10 campaign event notices.
- Eight policy statements.
- Seven campaign news items, such as poll results.
- Four reactions to news events, such as the death of terrorist Abu Musab al-Zarqawi.

The same Kyl news release also notes that Kyl has raised more money than Pederson. "Few people are contributing to Pederson's campaign because all he offers is tired partisan attacks," Kyl spokesman Andy Chasin writes.

Chasin later declined comment on whether using the term "tired partisan attacks" against someone else is, in fact, a tired partisan attack.

Pederson's people haven't conducted any similar analyses, but they believe Kyl's numbers are generally accurate, even if the category labels aren't. Pederson's people prefer the label "educate" rather than "attack."

"It's not negative to talk about records," Pederson spokesman Mark Bergman said. "We're educating the people of Arizona about what Jon Kyl has done in Washington for the last 20 years."

Kyl's people also conducted an analysis of their own news releases. During the time Pederson's campaign cranked out 100 news releases, Kyl's campaign issued 52.

Here's the breakdown, according to Chasin:

- 27 focused on Pederson.
- 25 focused on Kyl.

Chasin explained that it was impractical to use the same labels applied to the Pederson analysis because Kyl's policy statements and news spins are issued by his Senate office rather than his campaign office.